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9 | [Proposed] Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13 LAWRENCE JOSEPH, On Behalf of Himself) No. C-04-4908-JW(PVT)
14 and All Others Similarly Situated,)
15 Plaintiff,) CLASS ACTION
16 vs.) ~~PROPOSED~~ ORDER CONSOLIDATING
17 UTSTARCOM, INC., et al.,) RELATED ACTIONS
18 Defendants.) The Honorable James Ware
DATE: February 28, 2005
TIME: 9:00 a.m.
CTRM: 8

For the reasons set forth in its Order dated March 14, 2005, and pursuant
 1 Pursuant to Fed. R. Civ. P. 42(a), *Manual for Complex Litigation (Third)* §§21.12, 21.21 &
 2 33.3 (1997), and Civil L.R. 3-12, the Court hereby ORDERS, as follows:

3 **CONSOLIDATION OF RELATED CASES**

4 1. The following actions are consolidated for all purposes, including, but not limited to,
 5 discovery, pretrial and trial proceedings, pursuant to Fed. R. Civ. P. 42(a):

6 Abbreviated Case Name	7 Case Number	8 Date Filed
7 <i>Joseph v. UTStarcom, Inc., et al.</i>	8 C-04-4908-JW	9 11/17/04
9 <i>Schwanz v. UTStarcom, Inc., et al.</i>	10 C-04-4991-CRB JW	11 11/24/04
10 <i>Lebzetter v. UTStarcom, Inc., et al.</i>	11 C-04-5136-MHP JW	12 12/02/04
11 <i>Tiemann v. UTStarcom, Inc., et al.</i>	12 C-04-5132-MJJ JW	13 12/03/04

12 The consolidated action shall be captioned *In re UTStarcom, Inc. Securities Litigation*, No. C-04-
 13 4908-JW, and the files of this action shall be maintained in one file under Master File No. C-04-
 14 4908-JW.

15 2. Any other related actions now pending or subsequently filed in, or transferred to, this
 16 district shall be consolidated into this action for all purposes. This order shall apply to every such
 17 related action, absent order of the Court. A party that objects to such consolidation, or to any other
 18 provision of this order, must file an application for relief from this order within 14 days after the date
 19 on which a copy of the order is mailed to the party's counsel, pursuant to ¶7, *infra*.

21 3. This order is entered without prejudice to the rights of any party to apply for
 22 severance of any claim or action, for good cause shown.

23 **MASTER DOCKET AND CAPTION**

24 4. The docket in Civil Action No. C-04-4908-JW shall constitute the master docket for
 25 this action.

27 5. Every pleading filed in the consolidated action shall bear the following caption:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re UTSTARCOM, INC. SECURITIES) Master File No. C-04-4908-JW
LITIGATION)

) CLASS ACTION
This Document Relates To:)
)

6. The file in Civil Action No. C-04-4908-JW shall constitute the master file for every action in the consolidated action. When the document being filed pertains to all actions, the phrase "ALL ACTIONS" shall appear immediately after the phrase "This Document Relates To." When a pleading applies only to some, but not all, of the actions, the document shall list, immediately after the phrase "This Document Relates To," the docket number for each individual action to which the document applies, along with the last name of the first-listed plaintiff in said action (*e.g.*, "No. C-04-4991-JW (*Schwanz*)").

7. The parties shall file a Notice of Related Cases pursuant to Civil L.R. 3-12 whenever a case that should be consolidated into this action is filed in, or transferred to, this District. If the Court determines that the case is related, the clerk shall:

- (a) place a copy of this order in the separate file for such action;
 - (b) serve on plaintiff's counsel in the new case a copy of this order;
 - (c) direct that this order be served upon defendants in the new case; and
 - (d) make the appropriate entry in the Master Docket.

LEAD PLAINTIFF'S COUNSEL

8. After the Court has designated a Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(3)(b), the Lead Plaintiff shall designate a law firm or firms to serve as Lead Plaintiff's counsel, pursuant to 15 U.S.C. §78u-4(a)(3)(b)(v). Lead Plaintiff's counsel shall have authority to speak for and enter into agreements on behalf of plaintiffs in all matters regarding pretrial procedures, discovery and

1 settlement negotiations. Lead Plaintiff's counsel shall manage the prosecution of this litigation to
2 avoid duplicative or unproductive activities. Lead Plaintiff's counsel shall be responsible for
3 coordination of all activities and appearances on behalf of plaintiffs and for dissemination of notices
4 and orders. Lead Plaintiff's counsel shall be responsible for communications with the Court.
5

6 9. Lead Plaintiff's counsel shall communicate with other plaintiffs' counsel and have the
7 right to assign projects to other plaintiffs' counsel.
8

9 10. Defendants' counsel may rely upon agreements made with Lead Plaintiff's counsel.
10 Such agreements shall be binding on all plaintiffs.
11

DOCUMENT PRESERVATION

11 11. Counsel for the parties shall notify their clients of their document preservation
12 obligations pursuant to the federal securities laws.
13

14 12. ~~Defendants shall certify in writing within 30 days of entry of this order that they have
not knowingly altered, destroyed, mutilated, concealed, covered up, falsified, or made a false entry
in any record, document or tangible object with an intent to impede, obstruct, or influence the
investigation or proper administration of this action.~~
15
16

17 13. Pursuant to 15 U.S.C. §78u-4(b)(3)(c)(i), the parties shall "treat all documents, data
18 compilations (including electronically recorded or stored data), and tangible objects that are in the
19 custody or control of such person and that are relevant to the allegations, as if they were the subject
20 of a continuing request for production of documents from an opposing party under the Federal Rules
21 of Civil Procedure." The term "document" shall be interpreted consistently with the terms
22 "document" and "writing" as used in the federal rules of civil procedure and federal rules of
23 evidence.
24

PLEADINGS AND MOTIONS

25 14. Defendants are not required to respond to the complaint in any action consolidated
26 into this action, other than a consolidated complaint or a complaint designated as the operative
27 complaint.
28

15. Lead Plaintiff shall file a consolidated complaint within 60 days after the later of the filing of the order designating the Lead Plaintiff, unless otherwise agreed upon by the parties. The consolidated complaint shall be the operative complaint and shall supersede all complaints filed in any of the actions consolidated herein.

16. Defendants shall respond to the consolidated complaint within 60 days after service, unless otherwise agreed upon by the parties. If defendants file any motions directed at the consolidated complaint, the opposition brief shall be filed within 60 days of filing that motion and the reply brief shall be filed within 21 days of the filing of the opposition brief, unless otherwise agreed upon by the parties.

17. The parties shall serve all papers on one another in accordance with Northern District Local Rules (a) by hand; or (b) facsimile, unless otherwise agreed upon by the parties. After the appointment of Lead Plaintiff's counsel, defendants need only serve Lead Plaintiff's counsel with any papers in this action. Notwithstanding the foregoing, defendants may serve plaintiffs' counsel, other than Lead Plaintiff's counsel, by first-class mail, unless otherwise agreed upon by the parties.

IT IS SO ORDERED.

DATED: March 16, 2005

/s/James Ware

THE HONORABLE JUDGE JAMES WARE
UNITED STATES DISTRICT JUDGE

Submitted by:

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
KIMBERLY C. EPSTEIN
SYLVIA SUM

/s/

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a resident of the County of Los Angeles, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 9601 Wilshire Blvd., Suite 510, Los Angeles, California 90210.

2. That on January 14, 2005, declarant served the **[PROPOSED] ORDER CONSOLIDATING RELATED ACTIONS** by depositing a true copy thereof in a United States mailbox at Los Angeles, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

10 3. That there is a regular communication by mail between the place of mailing and the
11 places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th
day of January, 2005, at Los Angeles, California.

/S/
VALERIE SPENCER

UTSTARCOM 04 (CA)

Service List - 1/14/2005 (04-0558C)

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UTSTARCOM 04 (CA)

Service List - 1/14/2005 (04-0558C)

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